

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2037 – SB 1995

February 28, 2018

SUMMARY OF ORIGINAL BILL: Makes various changes regarding price gouging under the *Consumer Protection Act of 1977* and the *Tennessee Price-Gouging Act of 2002* (the Act).

Establishes that it is the intent of the General Assembly to protect citizens from unjustified increases in prices during or shortly after an abnormal economic disruption from goods and services.

Establishes that charging any other person a price for certain goods or services that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business is unlawful, from the declaration of an abnormal economic disruption by the governor, by proclamation or executive order, and continuing for fifteen calendar days.

Authorizes the governor to specify, in accordance with a declaration of an abnormal economic disruption, that only certain goods or services are covered by the Act.

Establishes that a price increase is not grossly excessive if such increase was directly attributable to: (a) price increases in applicable regional, national, or international commodity markets; (b) pricing set forth in any pre-existing agreement, including stored and in-transit inventory; (c) additional costs imposed on the person by the supplier of the goods or services; or (d) additional costs for labor, services, or material used to provide the goods or services, including costs of replacement inventory, additional costs to transport goods or services, and additional labor charges.

Establishes that any act of price gouging, being a violation of both the Act and the *Consumer Protection Act of 1977*, is not punishable as a criminal offense, and provides that no private right of action is available to any victim of price gouging.

Establishes that the Act preempts any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same or similar conduct prohibited by the Act.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

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SUMMARY OF AMENDMENT (013603): Deletes the provisions of the original bill which established that a violation of the Act is not punishable as a criminal offense, that there is no private right of action available to any person as a result of any such violation, and that a violation of the Act affects the conduct or trade or commerce under the *Tennessee Consumer Protection Act of 1977*.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Currently, pursuant to Tenn. Code Ann. § 47-18-5103, price gouging is unlawful in any area covered under a proclaimed state of emergency until the state of emergency is terminated.
- This legislation replaces “state of emergency” with “abnormal economic disruption” and limits the amount of time that a gross excess in price is unlawful, to 15 days following any proclamation by the governor, unless extended by a subsequent declaration.
- This legislation will limit the circumstances in which price gouging could be referred to and investigated, or prosecuted by the Attorney General’s Office (the AG).
- Based on information provided by the AG, this legislation will have a not significant impact to the current caseload of the agency.
- Any impact on the court system is estimated to be not significant.
- Based on information provided by the Department of Commerce and Insurance (DCI), this legislation will not have any significant impact on the Division of Consumer Affairs.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- This legislation will increase the number of reasons that can be used as defense for businesses which are accused of price gouging and will prevent a private right of action for a person injured as a result of price gouging.
- It is unknown how this will legislation will impact any future cases for businesses which are accused of price gouging; however, to the extent known, it is reasonably assumed that this legislation will have a not significant impact on commerce or jobs in this state.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jdb